

HOUSE BILL No. 1169

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-1.5.

Synopsis: Public meetings. Amends the definition of "meeting" for purposes of the open door law to include a gathering that occurs by electronic means including by electronic mail. Provides that communications between members of a governing body by electronic mail qualify as "gatherings" for purposes of the law prohibiting a majority of the governing body from holding a series of gatherings for the purpose of taking official action upon public business.

Effective: July 1, 2014.

Kersey

January 13, 2014, read first time and referred to Committee on Government and Regulatory Reform.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1169

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-1.5-2, AS AMENDED BY P.L.103-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 2. For the purposes of this chapter:
4 (a) "Public agency", except as provided in section 2.1 of this
5 chapter, means the following:
6 (1) Any board, commission, department, agency, authority, or
7 other entity, by whatever name designated, exercising a portion of
8 the executive, administrative, or legislative power of the state.
9 (2) Any county, township, school corporation, city, town, political
10 subdivision, or other entity, by whatever name designated,
11 exercising in a limited geographical area the executive,
12 administrative, or legislative power of the state or a delegated
13 local governmental power.
14 (3) Any entity which is subject to either:
15 (A) budget review by either the department of local
16 government finance or the governing body of a county, city,



- 1 town, township, or school corporation; or
- 2 (B) audit by the state board of accounts that is required by
- 3 statute, rule, or regulation.
- 4 (4) Any building corporation of a political subdivision of the state
- 5 of Indiana that issues bonds for the purpose of constructing public
- 6 facilities.
- 7 (5) Any advisory commission, committee, or body created by
- 8 statute, ordinance, or executive order to advise the governing
- 9 body of a public agency, except medical staffs or the committees
- 10 of any such staff.
- 11 (6) The Indiana gaming commission established by IC 4-33,
- 12 including any department, division, or office of the commission.
- 13 (7) The Indiana horse racing commission established by IC 4-31,
- 14 including any department, division, or office of the commission.
- 15 (b) "Governing body" means two (2) or more individuals who are
- 16 **any of the following:**
- 17 (1) A public agency that:
- 18 (A) is a board, a commission, an authority, a council, a
- 19 committee, a body, or other entity; and
- 20 (B) takes official action on public business.
- 21 (2) The board, commission, council, or other body of a public
- 22 agency which takes official action upon public business.
- 23 (3) Any committee appointed directly by the governing body or
- 24 its presiding officer to which authority to take official action upon
- 25 public business has been delegated. An agent or agents appointed
- 26 by the governing body to conduct collective bargaining on behalf
- 27 of the governing body does not constitute a governing body for
- 28 purposes of this chapter.
- 29 (c) "Meeting" means a gathering of a majority of the governing body
- 30 of a public agency **in person or by electronic means including**
- 31 **electronic mail**, for the purpose of taking official action upon public
- 32 business. It does not include any of the following:
- 33 (1) Any social or chance gathering not intended to avoid this
- 34 chapter.
- 35 (2) Any on-site inspection of any:
- 36 (A) project;
- 37 (B) program; or
- 38 (C) facilities of applicants for incentives or assistance from the
- 39 governing body.
- 40 (3) Traveling to and attending meetings of organizations devoted
- 41 to betterment of government.
- 42 (4) A caucus.



(5) A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources.

(6) An orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action.

(7) A gathering for the sole purpose of administering an oath of office to an individual.

(8) Collective bargaining discussions that the governing body of a school corporation engages in directly with bargaining adversaries. This subdivision ~~only~~ applies **only** to a governing body that has not appointed an agent or agents to conduct collective bargaining on behalf of the governing body as described in subsection (b)(3).

(d) "Official action" means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a



governmental entity.

SECTION 2. IC 5-14-1.5-3.1, AS ADDED BY P.L.179-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3.1. (a) Except as provided in subsection (b), the governing body of a public agency violates this chapter if members of the governing body participate in a series of at least two (2) gatherings of members of the governing body and the series of gatherings meets all of the following criteria:

- (1) One (1) of the gatherings is attended by at least three (3) members but less than a quorum of the members of the governing body and the other gatherings include at least two (2) members of the governing body.
- (2) The sum of the number of different members of the governing body attending any of the gatherings at least equals a quorum of the governing body.
- (3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.
- (4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of a governing body attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means. ~~excluding electronic mail.~~

(b) This subsection applies only to the city-county council of a consolidated city or county having a consolidated city. The city-county council violates this chapter if its members participate in a series of at least two (2) gatherings of members of the city-county council and the series of gatherings meets all of the following criteria:

- (1) One (1) of the gatherings is attended by at least five (5) members of the city-county council and the other gatherings include at least three (3) members of the city-county council.
- (2) The sum of the number of different members of the city-county council attending any of the gatherings at least equals a quorum of the city-county council.
- (3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) consecutive days.
- (4) The gatherings are held to take official action on public business.

For purposes of this subsection, a member of the city-county council attends a gathering if the member is present at the gathering in person or if the member participates in the gathering by telephone or other electronic means. ~~excluding electronic mail.~~



- 1 (c) A gathering under subsection (a) or (b) does not include:
- 2 (1) a social or chance gathering not intended by any member of
- 3 the governing body to avoid the requirements of this chapter;
- 4 (2) an onsite inspection of any:
- 5 (A) project;
- 6 (B) program; or
- 7 (C) facilities of applicants for incentives or assistance from the
- 8 governing body;
- 9 (3) traveling to and attending meetings of organizations devoted
- 10 to the betterment of government;
- 11 (4) a caucus;
- 12 (5) a gathering to discuss an industrial or a commercial prospect
- 13 that does not include a conclusion as to recommendations, policy,
- 14 decisions, or final action on the terms of a request or an offer of
- 15 public financial resources;
- 16 (6) an orientation of members of the governing body on their role
- 17 and responsibilities as public officials, but not for any other
- 18 official action;
- 19 (7) a gathering for the sole purpose of administering an oath of
- 20 office to an individual; or
- 21 (8) a gathering between less than a quorum of the members of the
- 22 governing body intended solely for members to receive
- 23 information and deliberate on whether a member or members may
- 24 be inclined to support a member's proposal or a particular piece
- 25 of legislation and at which no other official action will occur.
- 26 (d) A violation described in subsection (a) or (b) is subject to
- 27 section 7 of this chapter.

